IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 24865 of 2003

Between:

K.M.Deva Sundaram

..... PETITIONER

AND

The Regional Joint Director

for Secondary Education, Kadapa

and 4 others

.....RESPONDENTS

ORDER:

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Seeking a Mandamus, declaring the action of respondents 1 to 3 in promoting the 4th respondent as Clerk-cum-typist in H.M.M.High School, Rly.Kodur and the proceedings of the 2nd respondent bearing No.5533/135/2003, dated 01.11.2003, as illegal and void, the present writ petition is filed.

Initially, in this matter, interim order was granted suspending the proceedings dated 01.11.2003 passed by the 2nd respondent by orders dated 28.11.2003 in W.P.M.P.No.31359 of 2003. Against the said order, respondents 2 and 3, and respondent No.4 have filed separate W.V.M.P.Nos.465/2005 and 506/2004, seeking vacation of interim suspension. Today, when the order is dictating in the said vacate stay petitions, the learned counsel for the writ petitioner brought to the notice of this

court that if stay is vacated, the writ petition will become infructuous. Therefore, the order is being passed in the main writ petition.

It is the case of the petitioner that initially he was appointed as Record Assistant on 01.04.1978. He is eligible for promotion as clerk-cum-typist in the vacancy following retirement of one S.J.Sundaram Raju on 30.06.2003. He was promoted as Clerk-cum-Typist by the Chairman, Board of Education, South-Andhra Luthern Church (for short "SALC"), Tirupathi. He took charge of the promoted post on the FN of 01.07.2003. In the meanwhile the 3rd respondent in collusion with the 5th respondent, promoted the 4th respondent as Junior Assistant. The 2nd respondent by letter dated 01.11.2003 seek approval of the

1st respondent. The 3rd respondent, suppressing the approval of promotion of the petitioner, with a *mala fide* intention, promoted the

4th respondent, though he has not possessed requisite qualifications for the post of Clerk-cum-typist. It is further stated that a criminal case is also pending against the 4th respondent and he is ineligible for promotion.

Respondents 1 and 2 filed a detailed a counter affidavit denying the allegations made by the petitioner. The respondents state that the petitioner as well as 4th respondent was appointed on one and the same day i.e. on 01.04.1978 as Record Assistants. By virtue of date of birth, the 4th respondent is elder to the petitioner. The Chairman of Board of Education SALC is not competent to promote any employee unless permission is accorded by the 1st respondent as per G.O.Ms.No.1 Edn. Dated 01.01.1994. As per the statutory rules governed under rule 3 of the G.O.Ms.No.1 Education, dated 01.01.1994, the 1st respondent is the competent authority in respect of the High Schools to accord permission to the private managements to promote the staff and to appoint them. The promotion of the petitioner is illegal and arbitrary. There is no post as called clerk-cum-typist in the 3rd respondent institution. There is Junior Assistant post exists, which was fallen vacant w.e.f.01.07.2003 caused due to retirement of one J.Sundar Raju on 30.05.2003. The 1st respondent-Regional Joint Director of School Education, Cuddapah, vide his proceedings D.Dis.No.6202/B3/03, dated 26.12.2003 has approved the promotion of the 4th respondent.

Heard the learned counsel on either side.

The learned counsel for the petitioner contended that in spite of orders passed by the Commissioner of Director of School Education, Hyderabad dated 09.07.2003, the impugned order has been passed by the 2nd respondent; that the petitioner was duly promoted to the post of typist-cum-clerk by the proper authority and in pursuance of the promotion, the petitioner was already taken charge of that post; that the 4th respondent is ineligible for the post of clerk-cum-typist; and that the 1st respondent has violated the directions of the Commissioner and Director of School Education.

On the other hand, the learned Government Pleader for School Education contended that there is no sanctioned post of typist-cum-clerk in the 3rd respondent school and that the 4th respondent is the senior most Record Assistant and accordingly promoted by virtue of the proceedings of the 1st respondent.

It is not disputed before this Court that both the writ petitioner and the 4th respondent were appointed on 01.04.1978 as Record Assistants. Since their date of joining is one and the same, considering the age of the 4th respondent, the Correspondent fixed the seniority of both the persons. The 4th respondent was shown as No.1 and the writ petitioner was shown as No.2 in the seniority list. The case of the petitioner is that he was promoted as Clerk-cum-typist, whereas the respondents contend that there is no sanctioned post of Clerk-cum-Typist in the 3rd respondent School. When there is no such post, the petitioner cannot claim right to be appointed in the post of Clerk-cum-typist. By virtue of proceedings dated 07.10.2003 the 1st respondent accorded permission to the 3rd respondent institution in promoting the
4th respondent as Junior Assistant (Aided) in the existing vacancy caused due to retirement of one Sundar Raju on 30.06.2003. Consequently the 2nd respondent passed the impugned order.

The learned counsel for the petitioner contended that the
1st respondent has violated the directions of the Director of the School Education dated 09.07.2003. But the proceedings of the 1st respondent dated 07.10.2003 were not challenged in this writ petition. The impugned order is the consequential proceedings. Though the learned counsel raised several contentions, there are no

specific pleadings in the affidavit filed in support of the writ petition. Since the 4th respondent is senior most person in the cadre of Record Assistant, he was given promotion. Prima facie, the petitioner failed to establish that there is a vacant post of clerk-cum-typist in the 3rd respondent institution so as to claim right to be appointed in that post. No doubt the proceedings of the Commissioner and Director of School Education would go to show that the 1st respondent is requested not to fill up any other post until the matter is decided and until further orders that may be passed in court cases. But in the absence of any post, the petitioner cannot stop the proceedings. Admittedly, the 1st respondent is competent authority to approve promotions if any in aided posts. The leaned counsel for the petitioner further contended that a criminal case is pending against the 4th respondent and therefore he is not eligible for promotion. Pending of a criminal case is not a ground denying promotion. The contentions, raised by the learned counsel for the petitioner, have not been specifically stated in the affidavit filed in support of the writ petition.

For the foregoing observations, the writ petition is devoid of merit and liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

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K.C. BHANU,J

Dated: 10.08.2005

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